

REMARKS

Claims 11-23 are now pending in the present application. Additionally, Claim 11 has been amended and no claims have been added.

Applicant has carefully studied the outstanding Office Action. The present Response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of this application is respectfully requested. Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejections in view of the foregoing amendments and following remarks.

CLAIM REJECTIONS – 35 U.S.C. § 103**Claims 11-15, 18 and 19**

The Examiner has rejected claims 11-15, 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art in view of Crisci (U.S. Patent No. 4,049,107).

In particular, the Examiner stated:

Concerning Claims 11-15, 18 and 19, APA discloses that it has been well known in the art to combine injection molded caps with blow molded containers do to cost effectiveness over the other container materials in order to make thin, plastic snap-on caps. Furthermore, it is inherent that the manufacturing tolerance for blow molding is much lower than the tolerance for injection molding, i.e. injection molding is a much more precise process. However, APA does not disclose the structure of the present invention. Crisci [sic] teaches; a molded container and a molded overcap, the container being made of high-density polyethylene and the overcap being made of low-density polyethylene. The container has an opening surrounded by a rim, said rim having an upper portion that is rounded and a lower portion that is flat in cross-section, wherein said container is designed to have a nominal outer diameter at a largest circumference of said rim with a manufacturing tolerance; a snap-on overcap is removably snapped over said rim of said container, wherein a base of said overcap is sized to cover said opening, said overcap further comprising a flange extending essentially perpendicularly from said base, an inner surface of said flange containing a circumferential ridge having a peak, a flattened face of said ridge being configured to seat against said lower portion of said rim of said container. As disclosed by Crisci in column 3, lines 8-20, this particular structure forms both a vapor lock seal and a firm securement between the overcap and the container. It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of APA with the container

structure of Crisci in order to provide an economical manufacturing process to create a tightly sealed plastic container.¹

A prima facie case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). A proper prima facie case of obviousness cannot be established by combining the teachings of the prior art absent some teaching, incentive, or suggestion supporting the combination. *In re Napier*, 55 F.3d 610, 613, 34 U.S.P.Q.2d 1782, 1784 (Fed. Cir. 1995); *In re Bond*, 910 F.2d 831, 834, 15 U.S.P.Q.2d 1566, 1568 (Fed. Cir. 1990).

There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from the applicant's invention itself. *In re Oetiker*, 977 F.2d 1443, 1447, 24 U.S.P.Q.2d 1443, 1446 (Fed. Cir. 1992). A determination of the desirability of combining prior art references must be made without the benefit of hindsight afforded by an applicant's disclosure. *In re Paulsen*, 30 F.3d 1475, 1482, 31 U.S.P.Q. 1671, 1676 (Fed. Cir. 1994).

The Examiner indicates that one would be motivated "to have combined the teachings of APA with the container structure of Crisci in order to provide an economical manufacturing process." It is improper for an Examiner to use the Applicant's own disclosure to provide the motivation to combine.

Consequently, for at least this reason, applicants respectfully request the Examiner withdraw the rejection as to claims 11-19, and 23.

¹ Office Action mailed June 5, 2006, pages 2-3.

Further, claim 11 was further amended to further indicate that the cap is designed such that the contact occurs about a single flat circumferential surface to achieve desired surface to surface contact rather than undesired point-to-point contact. The amendment is supported by paragraph 21 of the published patent application (2005/0082304) where it states in part, "The design must be adjusted so that surfaces 442 and 444 on the inside of flange 436 never cause interference with the container Note also that surface 446 is not a continuation of sealing surface 440, but angles away from the container to prevent interference here." Such amendment is believed to further define the structure as suggested by the Examiner during the Examiner interview. Consequently, for at least this reason, applicants respectfully request the Examiner withdraw the rejection as to claims 11-19, and 23.

Further, all limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Claim 11 was previously amended to further indicate "a flattened face of said ridge being configured such that only said flattened face seats against said lower portion of said rim of said container." Such limitation is not taught or disclosed by Crisci. Rather, Crisci teaches a 4-point contact. (See e.g., abstract of U.S. Pat. No. 4,209,107) ("A container with closure, in which the container has an annular tapered ridge disposed below its upper edge, and the closure has an inverted U-shaped groove with side walls sized and shaped to sealingly contact the container body at 4 surfaces.) Consequently, for at least this reason, applicants respectfully request the Examiner withdraw the rejection as to claims 11-19, and 23.

Claims 16 and 17

In particular, the Examiner stated:

Concerning Claims 16 and 17, APA discloses the differences between manufacturing tolerances of the blow-molded container and the injection molded cap. Crisci teaches the nominal inner diameter of the overcap at the peak equal to

the nominal outer diameter of the rim of the container, and the nominal inner diameter of the overcap at locations away from the peak to be greater than the nominal outer diameter of the rim of the container. However, APA in view of Crisci does not disclose the specific relationship between the overcap and the container as described in the present invention. However, it would have been obvious to form the container and overcap with the claimed manufacturing tolerance, for the components of the container so as to ensure that the container is air-tight when overcap is properly placed on container. Further, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.²

For reasons, discussed above, claim 11 is non-obvious. Claims 16 and 17, which all depend upon claim 11 are therefore non-obvious as well.

Claims 20-22

The Examiner has rejected claims 20-22 under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art in view of Crisci (U.S. Patent No. 4,049,107). In particular, the Examiner stated:

APA in view of Crisci discloses all of the claimed information as stated above, yet fails to describe how to determine overlap, and the nominal inner diameter of the cap. However, it would have been obvious to have determined a nominal inner diameter of the overcap in several locations since determining these dimensions is necessary for container sealing and tightening purposes so as to not only make the container air-tight, but also make it feasible to put on and remove the overcap. Further, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.³

During the Examiner interview conducted on July 19, 2006, Examiner indicated that claim 20 was defined over the prior art of record. Consequently, applicants respectfully request the Examiner withdraw the rejection as to claims 20-22.

² Office Action mailed June 5, 2006, paragraph 3, page 3-4.

³ Office Action mailed June 5, 2006, paragraph 4, page 4.

Claim 23

The Examiner has rejected claim 23 under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art in view of Crisci (U.S. Patent No. 4,409,107) and further in view of Craftech Industries. In particular, the Examiner stated:

Crisci discloses all of the information as shown above, but fails to show polyethylene being a low friction plastic. However, this information is well known in the art and can be seen through the published information by Craftech Industries, Inc. that polyethylene is indeed a low-friction material.

For reasons, discussed above, claim 11 is non-obvious. Claims 16 and 17, which all depend upon claim 11 are therefore non-obvious as well.

CONCLUSION

In light of the amendments and the arguments made by Applicants above, Applicants submit that all pending claims are now in condition for allowance. Applicants respectfully request that Examiner withdraw all rejections with regard to the above-referenced claims in reliance on one or more of the grounds submitted by Applicants.

If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact Chad E. Walter or Colin P. Cahoon at 972-367-2001.

The Commissioner is hereby authorized to charge any payments that may be due or credit any overpayments to CARSTENS & CAHOON, L.L.P. Deposit Account 50-0392.

Respectfully submitted by:



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